

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO. 205 OF 2007.

Deepak Pandey. ... Petitioner.
Versus.
Dr.Nidhi Pandey & anr. ... Respondents.
Shri P.D.Prasad Rao for the Petitioner.
Shri M.N.Ramble for the Respondent No.1.

CORAM : ABHAY S.OKA, J.

DATED : 27th February, 2007.

P.C.:

1. By this petition under Article 227 of the Constitution of India, the Petitioner who is the father of a minor child has taken exception to the order dated 3rd October 2006 passed by the learned Judge of the Family Court by which the application made by the Petitioner for review of the order dated 18th May 2005 passed by the learned trial Judge below application at Exh.4 has been rejected.

2. The dispute insofar as this petition is concerned relates to the grant of access to the Petitioner to meet the minor child. Pending a matrimonial dispute, on an interim application at Exh.4, the learned trial Judge passed the order dated 18th May 2005 which reads thus:

. "The Petitioner mother shall give
access of the child to the Respondent-father

in the Chamber of the Marriage Counsellor on first Saturday of every month from 3.00 p.m. to 5.00 p.m.

. The Petitioner shall accompany the child at the time of access.

. The Respondent shall not take photographs of the son and shall not give chocolates to the son during the access period.

. The Respondent shall not give the gift which exceeds more than Rs.500/- to the son.

. If there is any difficulty in giving access of the child to the Respondent-father due to some unavoidable circumstances, the Petitioner shall inform by a phone or telegram in advance to the Respondent in this respect and shall compensate the said access as per the convenience of both the parties subject to information to the Court."

The Application for review was made by the Petitioner seeking following modifications in the order dated 18th May 2005:

"(a) That this Hon'ble Court be pleased to review/modify the orders dated 18.5.2005 in terms of permitting the applicant/respondent

to take photographs/video, and permitting him to give sweets/chocolates or other eatables to his son Anurag.

(b) That this Hon'ble Court be pleased to permit the applicant to keep his son for staying with him one whole day at his place by taking him in the morning of fourth Saturday of every month and by returning him to the Petitioner by the evening of following Sunday.

(c) That this Hon'ble Court be pleased to permit the applicant to celebrate the forth coming birthday of his son i.e. on 4-10-2006 at his place with his family members and relatives.

(d) That this Hon'ble Court be pleased to permit the applicant, who will himself go to the place where this Hon'ble Court may direct to have access to his son at every weekend on either Saturday or Sunday."

3. It is not in dispute that yesterday i.e. on 26th February 2007 the Petitioner was allowed to meet the child in presence of the Marriage Counsellor of the Family Court at Bandra. The first prayer made in the Review Application is for permitting the Petitioner to take photographs and video film of the child and for permitting him to offer sweets, chocolates and other

eatables to the minor child. The Petitioner has filed an undertaking on oath dated 20th February 2007 in this Court in which he has stated thus:

"1. I state that I have filed the above Writ Petition in the facts and circumstances as more specifically stated therein and I state that I am furnishing the following undertakings in the same:

- a) That I shall not publish the photographs/video recordings of my son Anurag, taken by me during the access time.
- b) That I shall not use the photographs/video recordings of my son Anurag, taken by me during the access time, in the legal proceedings."

I see no difficulty in allowing the Petitioner to take photographs or video film of the minor child during the time when he is allowed to meet the minor child as per the order dated 18th May 2006. The Petitioner has given an unconditional undertaking that he will not publish the photographs or video recordings taken by him and that he will not use the same in any legal proceedings.

If this undertaking is accepted, the Petitioner can be permitted to take photographs or video film of the child atleast on one occasion during the access time fixed under the order dated 18th May 2006. Before fixing the date for taking photograph or video film, the Petitioner or his Advocate will have to give an advance intimation to the Respondent or her Advocate. So far as the permission for offering sweets and other eatables is concerned, the Petitioner can be permitted offer the same to the child in presence of the Marriage Counsellor during the access time by handing over the same to the Marriage Counsellor who in turn should hand over the same to the Respondent. If the Respondent does not find anything wrong with the sweets or eatables offered by the Petitioner, she is expected to allow the child to enjoy the sweets or other eatables offered by the Petitioner. However, the Petitioner will not hand over any eatables directly to the child and it must be handed over to the Marriage Counsellor in whose presence access is granted to the Petitioner.

4. So far as prayer (b) of the Review Petition is concerned, considering the controversy between the parties and considering the fact that the Petitioner has not been able to regularly avail of the facility of access in terms of the order dated 18th May 2005, it is not advisable to consider the said prayer without

examining the report of the concerned Marriage Counsellor regarding the response of the child during the period during which the access is granted to the Petitioner. The orders regarding the access in a matter like this are never final and in case of change in circumstances, the Court can always modify the orders passed earlier considering the welfare of the child. In such matters the welfare of the child is the only paramount consideration. As of today the said prayer cannot be granted.

5. So far as prayer (c) concerned, it will not survive as of today and the Petitioner can always apply to the trial Court well in advance before the next birth day i.e. 4th October 2007. So far as prayer (d) is concerned, this is not the stage at which this relief can be granted. The Respondent is ready to bring the child to Mumbai in compliance with the order dated 18th May 2005. The said prayer can be considered only after the Petitioner starts meeting the child regularly as per order dated 18th May 2005. There are other disputes pending between the parties as regards the payment travelling charges etc. However, I am not dealing with the same in this petition as the same are not the subject matter of the present petition.

6. Hence the impugned order will have to be

modified and the following order is passed:

- i) The impugned order dated 3rd October 2006 is modified.
- ii) The undertaking of the Petitioner dated 20th February 2007 is accepted.
- iii) In view of the undertaking, on one particular day which is fixed in terms of the order dated 18th May 2005 for grant of access, it will be open for the Petitioner to take photographs/video film of the child in presence of the Marriage Counsellor. Before fixing date for taking photographs or video film, the Petitioner will give an advance intimation to the Respondent or to her Advocate. The Petitioner will also hand over copies of photographs or a copy of the video film to the Respondent or to her Advocate.
- iv) While meeting the child as permitted by order dated 18th May 2005, it will be open for the Petitioner to offer sweets/ chocolates or other eatables to the minor

child. However, he will not hand over the said articles directly to the child and he will hand over the same to the Marriage Counsellor in whose presence the access is taken. The Marriage Counsellor will in turn hand over the articles to the Respondent. If the Respondent finds nothing wrong with the eatables, it is expected that she will allow the child to enjoy the same.

v) So far as prayer (b) is concerned, the same cannot be granted at this stage. It will be open for the Petitioner to apply for the same relief before the trial Court in case of change in circumstances and if such an application is made, the Family Court is bound to decide the same after considering the report submitted by the Marriage Counsellor as regards the response of the child during the meeting between the Petitioner and child before him.

vi) So far as prayer (c) in the Review petition is concerned, liberty to the Petitioner to make appropriate

application to the Family Court as observed above.

vii) Prayer (d) is rejected.

viii) It is obvious that the parties will strictly abide by the order dated 18th May 2005 and the modification made to the said order by this order.

ix) Writ petition is disposed in the above terms.

x) Parties to act on an authenticated copy of this order.

Judge.

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